

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSH BRUECKNER

Plaintiff,

v.

YOU CAN BEAM LLC,

Defendant.

Civ. No. 20 CV 3323 (JSR)

PLAINTIFF’S RULE 56.1 STATEMENT

Plaintiff Josh Brueckner, by his attorneys, Giskan Solotaroff & Anderson respectfully submits this Statement of Undisputed Material Facts pursuant to Local Rule 56.1,

1. Plaintiff Josh Brueckner is a professional mixed martial arts athlete and a social media influencer who earns money by promoting producers and services to his approximate 2.76 million YouTube and 734,000 Instagram followers. (Declaration of Josh Brueckner (“Brueckner Dec.”) ¶2)

2. Mr. Brueckner is represented in his social media influencer business by Jake Rosen of Jake Rosen Entertainment. (Declaration of Jake Rosen (“Rosen Dec.”) ¶2-3)

3. In December 2019, Plaintiff Brueckner and Defendant You Can Beam LLC entered into an Independent Contractor Agreement (“Agreement”) that contained the following relevant provisions:

- a. 12-month initial term;
- b. Termination by Beam after six months on 30 days notice;

- c. Immediate termination by Beam “if Contractor refuses to or is unable to perform the Services or is in breach of any material provision of this Agreement and fails to cure such refusal, failure or breach within ten (10) days of notice by the Company;”
- d. A specified number of social media postings following certain guidelines;
- e. Payment to Brueckner by Beam of \$15,000 per month plus commissions on sales attributable to Brueckner;
- f. New York law to govern the agreement.

(Brueckner Dec.) ¶4

- 4. The Agreement specified Brueckner’s address was in Romeo, Michigan.

(Brueckner Dec. ¶ 12)

- 5. Based on instructions by Beam the term of the Agreement did not begin until February 2, 2020. (Brueckner Dec. ¶5) and Beam did not launch its business until March 4, 2020. (Brueckner Dec. ¶6)

- 6. Beam made one \$15,000 payment to Brueckner on or about March 19, 2020.

(Brueckner Dec. ¶5)

- 7. Brueckner posted videos featuring Beam products beginning on March 4, 2020.

(Brueckner Dec. ¶ 6)

- 8. On March 6, 2020, Brueckner had an email exchange with Michael Yewdell, the Chief Sales Officer for Beam outlining the videos planned for March 2020. In that exchange, Mr. Yewdell stated “[a]ppreciate all of the support on the launch [of the new Beam product]” and that Mr. Brueckner “had an incredible 2,000 people visit the site.” In discussing the schedule for

March 2020, Mr. Yewdell added “[a]s a reminder, if you could please add your BEAM link and coupon code to all youtube videos moving forward, thank you.” (Brueckner Dec. ¶ 7)

9. On March 9, 2020, Brueckner had a text exchange with Mr. Yewdell prior to posting a video for Beam. Mr. Yewdell told Mr. Brueckner “Dude you are so easy to work with.” Mr. Brueckner then posted a video featuring Beam products. Mr. Yewdell texted Brueckner that the video was “perfect.” (Brueckner Dec. ¶ 8)

10. On March 9, 2020, Brueckner’s manager, Jake Rosen, received a text from Mr. Yewdell, in which Yewdell stated “want to make sure all their videos from the start of the agreement have our link and coupon code in the description.” (Declaration of Jake Rosen (“Rosen Dec.”) ¶ 7.

11. On March 11, 2020, Brueckner posted a Youtube video which contained in the description featured Beam’s link and coupon code. (Brueckner Dec. ¶ 9)

12. Mr. Brueckner’s next post was scheduled for March 17, 2020. On that date, Mr. Yewdell texted Brueckner to “hold off” on posting a video. Mr. Yewdell stated that he was “sorry about the abrupt stop here but everything with this virus has put us on hold here.” (Brueckner Dec. ¶ 10)

13. On March 27, 2020, Mr. Rosen spoke with Mr. Yewdell and Russell Saks, another member of Beam and its CEO. Rosen recorded the conversation. (Rosen Dec. ¶ 9)

14. During the conversation, both Yewdell and Saks explained that the agreement was being terminated because the company was in severe financial distress, apparently because of the coronavirus emergency and the company was just trying to “keep the lights on.” There was no

mention of Mr. Brueckner's failure to include the Beam link and discount codes on the videos during the conversation. (Rosen Dec. ¶ 10-11)

15. Brueckner never received any notice of an alleged breach of the Agreement. (Brueckner Dec. ¶ 11)

16. According to a FedEx screenshot produced by Beam in discovery, the purported notice of breach of the Agreement was allegedly delivered to Clinton Township, Michigan on March 2, 2020. (Declaration of Jason Solotaroff ("Solotaroff Dec.") ¶ 3.

17. Brueckner lives in Romeo, Michigan, approximately 20 miles from Clinton Township, Michigan. (Brueckner Dec. ¶ 11)

18. Beam did send Brueckner a termination letter on April 8, 2020 which was received by Brueckner at his Romeo, Michigan address. (Brueckner Dec. ¶12). According to the FedEx screenshot produced in discovery for that delivery, it was delivered to Romeo, Michigan on April 10, 2020. (Solotaroff Dec. ¶4).

Dated: February 12, 2021
New York, New York

Respectfully submitted,

/s

Jason L. Solotaroff
GISKAN SOLOTAROFF & ANDERSON LLP
90 Broad Street, 10th Floor
New York, New York 10004
646-964-9640
jsolotaroff@gslawny.com

ATTORNEYS FOR PLAINTIFF